

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re DEMAS YAN

Case No. [16-cv-00305-RS](#)**ORDER AFFIRMING RULING OF  
BANKRUPTCY COURT**

This is an appeal of an order of the bankruptcy court, originally brought by Tony Fu and Bryant Fu, both appearing *in pro se*. Bryant Fu has withdrawn from the appeal. See Docket No. 10. Tony Fu filed an opening brief. No responsive brief has been filed, and the matter is ripe for decision.

The parties are familiar with the long history of the underlying bankruptcy proceedings and the multiple appeals filed in this court<sup>1</sup> and at the Ninth Circuit, and it will not be set out here. Of the appeals before the undersigned, none had merit, and most bordered on, or were, frivolous. All but one of those appeals, however, were filed by the debtor Demas Yan. In the current matter, Tony Fu, who initiated none of those prior appeals other than Case No. 09-3930 RS, expresses concern that the history of meritless appeals arising from this bankruptcy will prejudice the

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<sup>1</sup> Appeals here include Case Nos. 09-3930 RS, 11-1814 RS, 11-2211 RS, 11-3071 RS, 11-3914 RS, and 14-0085 RS. A number of earlier appeals were also filed and heard by a different district judge.

disposition of the present matter. The fact remains, however, that each case has been considered on its own merits, and this one will be as well.<sup>2</sup>

That said, Fu has presented no tenable basis for reversal of the order he is challenging. The district court reviews the bankruptcy court's findings of fact for clear error and its conclusions of law de novo. *See In re Lazar*, 83 F.3d 306, 308 (9th Cir. 1996); *see also* Fed. R. Bankr. P. 8013 ("Findings of fact ... shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses."). "A finding of fact is clearly erroneous when after reviewing the evidence we are left with the definite and firm conviction that a mistake has been committed." *In re Arnold and Baker Farms*, 177 B.R. 648, 653 (9th Cir. BAP 1994).

Here, Fu sought leave from the bankruptcy court to bring an action against the bankruptcy trustee alleging, in essence, that she had negligently and/or intentionally failed to carry out her duties to protect the estate, and that she had failed to prevent Yan from filing lawsuits asserting claims belonging to the estate and/or that purportedly violated the automatic stay provided by 11 U.S.C. § 362. As the bankruptcy judge cogently explained at the hearing and in the order, the bankruptcy trustee had no obligation, or practical ability, to prevent Yan from engaging in the alleged conduct, and none of Fu's allegations to the contrary are tenable. As the bankruptcy court further observed, creditors suffered no harm from trustee's alleged failure to recover concealed assets, from her alleged failure to post an adequate bond, or from Yan's stay violations, because creditors were paid in full and a surplus returned to the debtor. Finally, the bankruptcy court did not err in concluding that Fu's allegation the trustee accepted a bribe, supported only by a hearsay assertion of Yan, did not support any viable claim. Accordingly the decision of the bankruptcy court is affirmed.

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<sup>2</sup> The transcript of the hearing on the motion at issue in this appeal plainly shows it was the opinion of the bankruptcy judge that Yan has been the vexatious litigant throughout these proceedings and that Fu was a victim, not an additional perpetrator. Nothing in the record gives this Court any reason to doubt that assessment.

**IT IS SO ORDERED.**

Dated: September 28, 2016



RICHARD SEEBORG  
United States District Judge

United States District Court  
Northern District of California